487

SUPREME COURT OF THE UNITED STATES.

No. 185.

VICENTE MIRAMONTES AND AL., HEIRS-AT-LAW OF CANDELARIO MIRAMONTES, DECEASED, APP'TS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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CANDELARIO MIRAMONTEZ, claimant, *vs.* THE UNITED STATES, defendant. } For the place named. Land in Santa Clara county.

2 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on the twenty-second day of September, anno Domini one thousand eight hundred and fifty two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Candelario Miramontes, for land in Santa Clara county, was presented and ordered to be filed and docketed with No. 354, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *January* 22*d*, 1853.

In case No. 354, Candelario Miramontez for land in Santa Clara county, the deposition of Nicolas A. Den, a witness in behalf of the claimant, taken before Commissioner Harry I. Thornton, with document marked H. I. T., No. 1, annexed thereto, wasfiled.

3 (*Vide* page 4 of this transcript.)

SAN FRANCISCO, *September* 6*th*, 1853.

Case No. 354 called. The counsel for the claimant read the evidence argued, submitted, and taken under advisement by the board.

SAN FRANCISCO, *October* 25*th*, 1853.

In the same case the counsel for the claimant filed the following affidavit, to wit:

(*Vide* page 44 of this transcript.)

SAN FRANCISCO, *November* 3*d*, 1853.

In the same case the deposition of Maximo Martinez, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, was filed.

(*Vide* page 5 of this transcript.)

SAN FRANCISCO, *December* 27*th*, 1853.

In the same case Commissioner Thompson Campbell delivered the opinion of the board upon the motion of the counsel for the claimant,

filed heretofore, to wit, on the 19th October, ult., asking leave to substitute the names of the heirs of the petitioner in this case, which motion having been sustained, leave was granted and the case ordered to the foot of the docket, and the following order was made, to wit:

(*Vide* page 43 of this transcript.)

4 SAN FRANCISCO, *October 6th*, 1854.

In the same case the deposition of Peter T. Sherrebeck, José de Jesus Noe, Tiburcio Vasquez, and José Antonio Alviso, witnesses in behalf of the United States, taken before Commissioner Peter Lott, were filed.

(*Vide* pages 7, 8, 10, and 14, of this transcript.)

SAN FRANCISCO, *January 9th*, 1853.

Case No. 354 was ordered to be placed at the foot of the 4th class cases on the trial docket.

SAN FRANCISCO, *January 30th*, 1855.

Case No. 354 was submitted without argument, and taken under advisement by the board.

SAN FRANCISCO, *February 6th*, 1855.

In the same case Commissioner Alpheus Felch delivered the opinion of the board, confirming the claim.

(*Vide* page 47 of this transcript.)

And the following order was made, to wit:

(*Vide* page 52 of this transcript.)

5 *Petition.*

To the United States board of commissioners for the ascertainment and settlement of land titles in California:

Your petitioner, Candelario Miramontes, a Mexican by birth, and a citizen of California, respectfully showeth: That he claims to be the owner of the tract of land situate in the county of San Francisco, and bounded as follows, viz: On the north by "El Arroyo de los Pelarcitos," or the creek of the little pillars; on the south by El Arroyo de la Purissima; on the east by the sierra, at summit of the range of mountains, and on the west by the ocean; that your petitioner claims the said land under and by virtue of a grant thereof, made by your petitioner on the second day of January, A. D. 1841; that the said grant and a transl tion thereof are herewith filed; that the espediente of said title, including a diseno of said tract, are on file among the archives of the former government of California, and that a copy of the same duly certified by the surveyor general of the United States for the State of California, in whose possession the said archives now are, is herewith filed; that said tract contains about one
6 and a half square leagues of land; that the same is now, and

has been ever since the date of said grant, in the peaceable and exclusive possession of your petitioner; and that your petitioner knows of no claim thereto conflicting with his own. He therefore prays that his said claim and title may be duly confirmed by your honorable board.

CLARKE, TAYLOR & BECKH,
Att'ys for Pet'r.

Filed in office Sep. 22d, 1852.
(Signed) GEO. FISHER, *Sec'y.*

7 *Deposition of N. A. Den.*

SAN FRANCISCO, *Jan'y 22d*, 1853.

On this day, before Com. Harry I. Thornton, came Nicholas A. Den, a witness in behalf of the claimant, Candelario Miramontes, being petition No. 354, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

Questions by claimant.

Ques. 1st. What is your name, age, and place of residence?

Answer. My name is Nicholas A. Den; my age, forty years; and my place of residence, Santa Barbara.

Quest. 2d. Look at the documents now shown you, marked Exhibit 1, and attached to your deposition, purporting to be an original grant from Juan B. Alvarado to Candelario Miramontes, with his subsequent petition to Micheltorena for the sobrantes and the section of the government thereon in regard to the land known as Arroyo de las Pilarcitos; state what you know concerning said documents, and whether the signatures thereto are genuine.

Answer. I have examined the document above, espediente
8 marked No. 1, and filed with this deposition. I have no doubt of its genuineness. I am acquainted with the handwriting of Juan B. Alvarado, Manuel Jimeno, and Micheltorena, having often seen them write, and state that their signatures in and upon said document are their genuine signatures.

N. A. DEN.

Sworn to and subscribed before me this 22d of Jan'y, 1853.
HARRY I. THORNTON,
Com'r, &c.

Service acknowledged.
ROBERT GREENHOW,
Ass't Law Agent.

Filed in office Jan'y 22, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of Maximo Martinez.

9 OFFICE OF THE BOARD OF COMMISSIONERS, &c.

This day, before Com'r R. Aug. Thompson, came Maximo Martinez, a witness in behalf of Candelario Miramontes, No. 354, who, after being duly sworn, deposed as follows:

Testimony on behalf of claimant. Present: I. Clark, attorney for claimant, and R. Greenhow, esq'r, ass't law agent.

Witness states his name is Maximo Martinez, his age sixty-three years, and residence Santa Clara county.

Questions by claimant's att'y.

Do you know the land claimed in this case by virtue of a grant to Candelario Miramontes. If so, state where it is situated, and what you know in relation to its occupation and improvement.

Answer. I know said rancho; it is situated on the sea-coast, in the county of San Francisco. I first knew said rancho to be occupied by Candelario Miramontes by license from the governor in the year 1840; during the same year he built a house, in which he lived with his numerous family; he also built corrals and placed his stock
10 on it, and began to cultivate it. In 1841 he obtained from Governor Alvarado a grant for the land. This I know, because I received the title from the governor at Monterey and brought it myself to said Miramontes. He continued to reside there until his death, and his family have resided there ever since. As the children of said Miramontes grew up and married they built themselves houses in different parts of the ranch, and there are now on it eleven houses, some of adobe and some of wood, occupied by his descendants, children and grandchildren. The following are the names of the children of said Miramontes: Vicente, Ignatio, Maricino, who died, leaving a son, Manuel Bernardo; Rodolfo, Arsenio, José de las Santos, Raimundo, Juan José, Guadalupe Ramona José Dolores married to Stanislaus; Carmel married to Francisco Gonzales. All the descendants of the grantee settled on the ranch are engaged in agricultural pursuits, cultivating portions of the land and keeping stocks of cattle.

his
MARIANO + MARTINEZ.
mark.

Sworn to and subscribed before me Nov. 3, 1853.
R. AUG. THOMPSON,
Com'r.

11 Filed in office Nov. 3, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of José de Jesus Noe.

UNITED STATES OF AMERICA,
State of California:

SAN FRANCISCO, *October* 4, 1854.

This day came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, José de Jesus Noe, a witness on behalf of the United States in case No. 354 on the docket of said board, wherein Candelario Miramontes *et al.* are claimants; and said witness, being sworn, deposed in Spanish, which is interpreted by the interpreter to said board as follows:

Mr. Clark, the claimant's counsel, is notified and present.

Questions by U. S. law agent.

1st question. What is your name, age, and residence?

Answer. My name is José de Jesus Noe; my age, 48 years;
12 and I reside in the county of San Francisco, California.

2d question. Are you acquainted with the rancho claimed by Candelario Miramontes in this case; if yea, were you ever present at a measurement of said rancho by Francisco Sanchez, the alcalde; and if yea, what was done on that occasion?

Answer. No; I never saw the rancho in question, and I never saw any measurement of it.

J. DE JESUS NOE.

Sworn to and subscribed before me October 4, 1854.

PETER LOTT,
Commissioner, &c.

Filed in office October 6th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

13 *Deposition of Tiburcio Vasquez.*

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *October* 4, 1854.

This day came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Tiburcio Vasquez, a witness on behalf of the United States in case No. 354 on the docket of said board, wherein Candelario Miramontes *et al.* are claimants; and said witness, being sworn, deposed in Spanish, which was interpreted to said board as follows:

Mr. Clark, the claimant's counsel, was notified, as appears in annexed notice, but was not present.

Questions by U. S. law agent.

1st question. What is your name, age, and residence?

Answer. My name is Tiburcio Vasquez; my age, 60 years; my residence, in San Francisco county, California.

2d question. Are you acquainted with the land claimed in this case by Candelario Miramontes; if yea, how long have you known it, and state also if you were present at the measurement of said land; if yea, what was done on that occasion?

14 Answer. I am acquainted with said land; I have known it since about 1840 or 1841; I was present when Francisco Sanchez, as alcalde, gave juridical possession of it to said Candelario Miramontes. The land was measured. They began at the Arroyo de los Pilarcitos and measured to the Cañada Vendo. They said it was one league.

his
TIBURCIO × VASQUEZ.

Subscribed and sworn to before me October 4, 1854.

PETER LOTT,
Commissioner, &c.

No. 354.—*Case before the U. S. board of land commissioners.*

To Messrs. Clark, Taylor, Beckh, and Campbell, att'y for claimants:

Take notice, that on the 4th day of October, 1854, before a proper commissioner, at the court-room of the commission, at the hour of 10 a. m., or as soon thereafter as the matter can be reached, I shall proceed to take the depositions of Francisco Sanchez, José de la Cruz Sanchez, Tiburcio Vasquez, Antonio Alviso, and others, to be
15 read in evidence on the trial of said case on behalf of the United States.

Respectfully,

J. H. McKUNE,
Law Agent.

Rec'd copy of above notice October 3d, 1854.

CAMPBELL, TAYLOR & BECKH,
Att'ys for Claimant.

Filed in office Oct. 6, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of Peter T. Sherreback.

UNITED STATES OF AMERICA,
State of California:

SAN FRANCISCO, *Oct.* 4, 1854.

This day came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Peter T. Sherreback, a witness on behalf of the United States in case No. 354 on the docket of said board, wherein Candelario Miramontes *et al.* are claimants; and said witness, being sworn, deposed as follows:

16 The claimant's counsel, Mr. Clark, is present.

Questions by the U. S. law agent.

1st question. What is your name, age, and residence?

Answer. My name is Peter T. Sherreback; my age, 42 years; my residence, at San José, Santa Clara county, California.

2d question. Are you acquainted with the rancho claimed by Candelario Miramontes in this case; if yea, how long have you known it?

Answer. I am acquainted with the rancho. I have known it since the beginning of the year 1841.

3d question. Were you ever present when said rancho was measured? If yea, state what was done at that time.

Answer. I was present once when said rancho was measured. I do not recollect distinctly the time, though it was in 1842 or 1843, or about that time. Francisco Sanchez, the alcalde, came and requested me to go with him as an assisting witness to the measurement of said land, and I went. Francisco de Haro, the alcalde's clerk, was
17 present, and also José Antonio Alviso, and some other persons—some 4 or 5, whose names I do not remember. We commenced measuring at a little gulch near Tiburcio Vasquez's house. We run the line directly south across the plain land to a place called Cañada Verde. There was a little gulch which runs out to the sea, and we made that the southern boundary of the rancho. The title called, I think, for one league, a little more or less. We measured from said southern gulch, where it strikes the beach out in an easterly direction, to a round hill in the mountains, and then a line from the northern gulch out easterly in equal distance with the line which ran to the round hill.

Cross-examined by Mr. Clark, the counsel for claimant.

1st question. What was the length of the several lines which you measured?

Answer. I do not remember the length of them.

2d question. What is the general direction of the coast on which said rancho borders?

18 Answer. It is nearly north and south, though I think a little varying towards a direction from north by west to south by east.

3d question. Were the claimants living on the land at the time you measured it? and state what improvements and cultivation they had there.

Answer. Yes, they were living on the land. There was a comfortable house; some 5 or 6 acres of land under fence and cultivation, and a corral. These improvements were near the north part of the land we measured. They had cattle and horses also on the rancho.

4th question. Was there any record made by the alcalde of the measurement of which you have spoken?

Answer. I did not see any, and do not know whether any was made.

Re-examined by U. S. law agent.

1st question. How far is Tiburcio Vasquez's house from the ocean, and on which side of the Arroyo Pilarcitos?

19 Answer. It is a few hundred yards from the sea, and on the north side of said arroyo.

2d question. State whether Francisco Sanchez, the alcalde of whom you have spoken, is still living?

Answer. Yes, he is still living.

3d question. Was Candelario Miramontes, the claimant, present at the measurement spoken of; if yea, what did he do by way of assenting to said measurement?

Answer. He was present, and after the measurement expressed his satisfaction with it, and said it was all right.

PEDRO T. SHERREBACK.

Subscribed and sworn to before me October 4th, 1854.

PETER LOTT,
Commissioner, &c.

Filed in office Oct. 6, 1854.

(Signed) GEO. FISHER, *Sec'y.*

20 *Deposition of José Antonio Alviso.*

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *October* 4, 1854.

This day, before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, José Antonio Alviso, a witness on behalf of the United States in case No. 354 on the docket of said board, wherein Candelario Miramontes *et al.* are claimants; and said witness, being sworn, deposed in Spanish, which is interpreted by the interpreter to said board, as follows:

Mr. Clark, counsel for claimants, is present.

Questions by U. S. law agent.

1st question. What is your name, age, and residence?

Answer. My name is José Antonio Alviso; my age about 60 years; and I reside in Santa Clara county, California.

2d question. Are you acquainted with the land claimed in this case by Candelario Miramontes; if yea, how long have you known it, and what was the character of your acquaintance with it?

Answer. I am acquainted with said land. I have known it some 13 or 14 years. It is adjoining to my own land. I have been
21 very often on the place, and am well acquainted with it.

3d question. When did said Miramontes first settle on said lands, and what was the character of that occupation?

Answer. He settled there some 13 or 14 years ago. I do not remember exactly the time. It was about the time I settled on the adjoining land. He built a wooden house and a corral; fenced in and cultivated some of the land; he took on to the place some 30 cows and a band of some 30 mares. He has continued to occupy ever since.

4th question. Were you ever present at a measurement of the land in question; if yea, who were present, what was the object of said measurement, and what was done on that occasion?

Answer. I was present at a measurement of the land. I do not remember the date. Francisco Sanches was the alcalde who measured the land, and there were present Peter Sherrebeck, Tiburcio Vasquez, and Manuel Sanchez, and there was an American, James Pease, and also Francisco de Haro. The object was to give juridical pos-
22 session of the place to Candelario Miramontes. They measured the land, commencing at the door of the house of said Miramontes; they measured from the house south one league and 400 varas to a ditch or gulch (Sanjon) de Cañada Verde, which is the boundary of my land; we drove a stake there, and then measured in a northwesterly direction a half league. Then the alcalde stopped measuring. It was a half league from the sea to the hills, and the alcalde told Miramontes that he could take the other half league in the hills; pointing to the hills, he said you can make up full league in that direction.

5th question. How far is Candelario Miramontes' house from the ocean, and how far from and on which side of the Arroyo Pilarcitos?

Answer. It is about six hundred varas from the sea, and about 100 varas south from said arroyo.

6th question. How far is it from the mouth of the Cañada Verde to the mouth of the Arroyo Purissima?

Answer. It is perhaps about a half league.

23 7th question. State whether the Cañada Verde runs about parallel with the Arroyo de los Pilarcitos.

Answer. It does not run parallel; the cañada runs more northerly as it approaches the sea. It runs into the land of Miramontes and cuts off a portion of it. It is nearer the said arroyo where they both strike the sea; that it is at the head of the cañada.

8th question. How much land of Miramontes lies south of the Cañada Verde?

Answer. There was no part of Miramontes' land south of said cañada. The cañada was established by the alcalde as the boundary of Miramontes' land. When I said it cut off a portion of his land I meant that it would cut it off if his land had been measured in a square form, but the alcalde's measurement made the cañada the boundary line.

9th question. Who has been in possession of the land between the Cañada Verde and the Arroyo Purissima since 1840 to the present time?

Answer. I myself occupied it. I lived on it from 1840 till
24 about 2 years ago. I sold it then to Messrs. McCoy and Clarkson. Clarkson now lives on it.

Cross-examined by claimant's counsel.

1st question. Did not Miramontes cultivate a part of the land between the Cañada Verde and Arroyo Purissima?

Answer. The Miramontes never did cultivate them; they came there and began to plough the first year of their settlement, and I drove them off. It was my land, and I would not let them have it.

2d question. How many varas are there in a lineal league? Answer. There are 1,075.

JOSÉ ANTONIO × ALVISO.

Subscribed and sworn to before me October 4, 1854.

PETER LOTT,
Commissioner, &c.

Filed in office Oct. 6, 1854.

(Signed) GEO. FISHER, *Sec'y.*

25 *Año de* 1841.

Espediente promovido por el C. Candelario Miramontes en pretencion de un sitio de ganado mayor en terrenos del establicimiento de S^{a}. Franc^{o}.

No. 217.

A —Espediente.

Sello. Exmo. S. Gobernador:

Monterey, 15 *de Octubre de* 1840.

Informe el señor prefecto del 1er. distrito sobre el contenido en esta instancia.

JIMENO.

Candelario Miramontes Mejicano por nacimiento y avecindado en San Francisco adonde ha prestado todo sus serbicios desde su preventud y hallandose con un numero de familia que no tiene adonde ponerlo con unos pocos bienes de ganado bacuno y caballada se presenta con V. E. respetuosamente para q. le conceda el parage que esta por la costa de S. Franco. entre el Arroyo de los Pularcitos y el de La Purisima con el norte y el Sur y al O. y E. con la sierra y margen del mar, siendo la estension de legua y media pocos mas ó menos, pues un gran pedaso en esteril por falta de agua y siendo de ancho tres cuarto de legua. A. V. E. pues rendidamente suplica el
26 solicitante le conseda como pide y represente el diseño que acompaña gracia que espero de V. E. no siendo en papel sellado este mi solicitud por no haberle, jurando no ser de malicia y lo necesario ja.

St. Franco., *O'bre* 8 *de* 1840.

CANDELARIO MIRAMONTES.

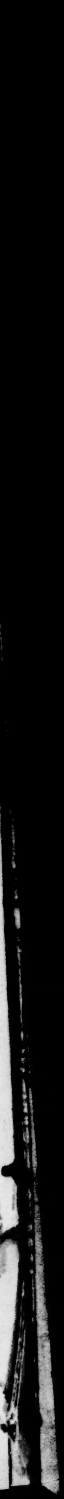
Pasé esta instancia al juez de paz de San Franco. para que informe sobre su contenido y si el terreno que solicita esta valdio.

CASTRO.

S^{a}. Juan de Castro,
22 *de Noviembre de* 1840.

San Franco., *D'bre* 1o, *de* 1840.

En virtud del decreto que antesede tengo el honor de informar que el solicitante en esta instancia obtiene los requisitos necesarios pa. ser atendido y que el terreno q. solicita pertenece al establicimto. de



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Answer. There are 1,075.

JOSÉ ANTONIO × ALVISO.

Subscribed and sworn to before me October 4, 1854.

PETER LOTT,
Commissioner, &c.

Filed in office Oct. 6, 1854.

(Signed) GEO. FISHER, *Sec'y.*

25 *Año de* 1841.

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26 solicitante le conseda como pide y represente el diseño que acompaña gracia que espero de V. E. no siendo en papel sellado este mi solicitud por no haberle, jurando no ser de malicia y lo necesario ja.

S^{t}. Franco., *O'bre* 8 *de* 1840.

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Pasé esta instancia al juez de paz de San Franco. para que informe sobre su contenido y si el terreno que solicita esta valdio.

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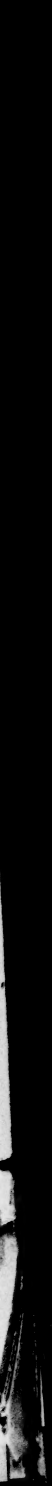

Dolores y solo lo ocupan un costo n. de ganado bacuno el que se halla perdido por no reconoce rodeo y ande ambulante en diversos parajes de las costas dicho terreno es de temporal, no esta comprendido en las veinte leguas limitrofes y si en las diez litorales y que el solicitante lo esta poseyendo con sus bienes por haverselo permitido desde antes el gobierno departmental.

FRANCO. GUERRERO.

27 Exmo. Senor Gobernador: El terreno que se pretende se halla en la actualidad ocupado con algunos bienes de campo pero todo se reduce á estar alsado fuera del parage mencionado, y en mi concepto puede V. E. concerderlo si lo tuviere á bien, á mas que el interesado tiene una licencia del gobierno para ocuparlo inteniramente, mientras corren los tramites de Estilo el presente esped'te.

Sn. Juan de Castro, 29 de D'bre, de 1840.

JOSÉ F. CASTRO.

Monterey, 2 *de Enero de* 1841.

Vista la peticion con queda principio este espediente, el informe del Sr. prefecto del 1o distrito, con todo lo demas que se tuvo presente y ver convinio; se declara al C. Candelario Miramontes dueño en propiedad de un sitio de ganado mayor entre los Arroyos de los Pilarcitos y La Purisima, la sierra y el mar y corresponde al establicimto. de S. Francisco; librese el despacho correspondiente, tomese razon en el libro respectivo y reservase para la aprobacion de la E. junta departamental. El E. S. D. Juan B. Alvarado, gobernador constitucional del departamento de las Californias asi lo mando, y firmo doi fee.

(Here follows map, marked page 27.)

28 *Juan Bautista Alvarado, gobernador constitucional del departamento de las Californias:*

Por cuanto Dn. Candelario Miramontes á pretendido para su beneficio personal y el de su familia un sitio de ganado mayor poco mar ó menos, entre los Arroyos de los Pularcitos y La Purisima la sierra y el mar, practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas á nombre de la nacion Mejicana e benido en concederle el parage mencionado declarandole la propiedad de el por las presentes letras sugetandose á la aprovacion de la Exma. junta departamental y á las condiciones siguientes.

1a. l'odra sercarlo sin perjudicar los travecias caminos y servidumbres lo disfrutara libre y esclusivamte. destinandolo al uso ó cultivo que mas le acomode pero dentro de un año fabricara casa y estara habitada.

2a. Solicitara del juez respectivo que le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra á mas de las majoneras algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace mencion es de un sitio de ganado

mayor poco mas ó menos segun esplica el diseño que corre enel
29 espediente respectivo, El Juez que diere la posecion lo hara medir conforme a ordenanza quedando el sobrante que resulte á la nacion para los usos conbinientes.

4ª. Si contraviniere á estas condiciones perdera su dercho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á dos de Enero de mil ochocientos cuarenta y uno.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CAL'A.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having under my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the eight preceding and hereunto annexed pages of tracing paper, numbered from one to eight inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of
30 certain documents now on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, this 13th day of February, 1852.

[SEAL.]

SAM'L. D. KING,
Surveyor Gen. Cal'a.

Filed in office Sept. 22, 1852.

GEO. FISHER, *Sec'y.*

31 Year 1841.

Record of proceedings at the instance of the citizen Candelario Miramontes, soliciting one square league on lands of the establishment of San Francisco.

No. 217.

Translation of Espediente.

EXCELLENT SIR GOVERNOR: I, Candelario Miramontes, a Mexican by birth, and residing in San Francisco, where I have rendered all my services from my youth, and finding myself with a numerous family, and having no place where to put my few black cattle and horses, I present myself respectfully before your excellency that you may grant me the location situate along the coast of San Francisco, between the Arroyo de las Pilarcitos and Arroyo de las Purisima on the north and south, and to the west and east on the sierra and the margin of the sea, being in extent one league and a half, a little more or less, as a large piece is sterile for want of water, and being in width three-quarters of a league.

Therefore the petitioner humbly prays your excellency to grant him, as asked for and exhibited in the accompanying sketch, a favor which he expects of you, not using stamped paper because it is not to be had; swearing there is no malice herein and to what else is necessary, &c.

32 CANDELARIO MIRAMONTES.

SAN FRANCISCO, *Oct.* 8, 1840.

(Marginal:)

MONTEREY, 15*th October*, 1840.

The prefect of the first district will report on the contents of this instance.

JIMENO.

SAN JUAN DE CASTRO, 22 *Nov.*, 1840.

Let the instance be referred to the justice of the peace of San Francisco, that he may report on the contents thereof, and whether the land solicited is vacant.

CASTRO.

SAN FRANCISCO, *Dec.* 1, 1840.

In virtue of the foregoing decree, I have the honor to report that the petitioner in this instance possesses the necessary requisites in order to be attended to, and that the land he solicits belongs to the establishment of Dolores, and is only occupied by a small number of black cattle, which is in a state of abandonment on account of not recognizing any enclosure, and goes ambulatory in sundry locations of the coasts.

Said land is seasonably irrigated, is not comprised in the twenty limiting or ten littoral leagues, and that the petitioner in
33 possessing it with his stock as having been permitted previously by the government of the department.

FRANCO. GUERRERO.

EXCELLENT SIR GOVERNOR: The land claimed is in reality occupied by some country stock, but all is reduced to being raised out of the mentioned location, and in my opinion your excellency can grant it if you should think it expedient, the more so as the interested party holds a license from the government to occupy it ad interim whilst the judicial procedure is going on through the present etpediente.

San Juan de Castro, 29th Dec., 1840.

JOSÉ F. CASTRO.

MONTEREY, *January* 2, 1841.

In view of the petition with which this espediente commences, the report of the prefect of the 1st district, with whatever else borne in mind and was to the purpose, the citizen Candelario Miramontes is declared owner in his own right of one square league of land (sitio de ganado mayor) between the creeks of Las Pilarcitos and La Purisima,

la sierra, and the sea, and appertaining to the establishment of San Francisco.

Let the corresponding document be issued, entered in the respective book, and reserved for the approbation of the excellent de-
34 partmental assembly.

Don Juan B. Alvarado, constitutional governor of the department of both Californias thus did order and sign. I attest it.

Filed in office Sep. 6, 1853.

GEO. FISHER, *Sec'y.*

Document H. I. T. No. 1, *annexed to deposition of N. A. Den.*

35 Sello 1o., seis pesos.—Habilitado provicionalmte. por la aduana maritima de Monterey para los años de 1839 y 1840.

ALVARADO.
ANTONIO MA. OSIO.

[SELLO.] Juan B. Alvarado, gobernador constitucional del departamento de las Californias:

Por cuanto el C. Candelario Miramontes, Mejicano por nacimiento ha pretendido para su beneficio personal y el de su familia un terreno que se halla entre el Arroyo de los Pilarcitos por el N. de La Purisima por el S. la sierra, por el E. y el mar por el O., perteneciente al establicimiento de S. Francisco; practicadas previamte. las diligencias y averiguaciones concernientes segun lo despuesto por leyes y reglamentos, usando de las facultades que me son conferidas á nombre de la nacion Mejicana por decreto de este dia he venido en concederle al referido Candelario Miramontes el terreno mencionado declarandole la propiedad de el por las presentes letras á reserva de la aprovacion de la E. junta departamental y bajo las condiciones siguientes.

1a. Podra cercarlo sin perjudicar las travecias caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode pero dentro de un año fabricara casa y estara habitada.

2a. Cuando se le confiera la propiedad solicitara del juez respectivo que le de la posecion juridica en virtud de esta despacho por el
36 cual se demarcaran los linderos en cuyos limites pondra á mas de las majoneras algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se le hace donacion es de un sitio de ganado mayor poco mas ó menos, segun esplica el diseño que corre en el espedte. El juez que diere la posecion lo hara medir conforme á ordenanza para señalar los linderos.

4a. Si contraviniere á estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando q. sirviendole de titulo el presente y teniendose por firme y valedero se tome razon de el en el libro que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á dos de Enero de mil ochocientos cuarenta y uno.

JUAN B. ALVARADO.
MANL. JIMENO, *S'rio.*

497

Queda tomada razon de este titulo á fojas 4a. del libro respectivo de asientos de terrenos valdios.

JIMENO.

Sello tercero, dos reales.—Habilitado provicionalmente por la aduana maritima del puerto de Monterey en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MA. OSIO.
JIMENO.

Revalidado para los años de 1842 y 1843.

ANTONIO MA. OSIO.
ALVARADO.

MONTERREY, *Oct'bre* 14, *de* 1844.

Inf'e el S. Sri del Despacho y si las necesitare pida otros.

MICHELT'A.

EXMO. SR. GOV.: Candelario Miramontes natural de este departamto. y vesino de la jurisdiccion de San Fran'co ante la recta justificacion de V. E. como mejor proceda en derecho digo: q. hace el espacio de tres años q. estoy poseando, con justo titulo el parage nombrado Arroyo de los Pilarcitos en donde tengo ubicada casa, huerta, labores, corrales, ja. como lo podie justificar en caso ofresido siendo los linderos principales q. desde un principio solicite desde el arroyo mencionado de los Pilarcitos hasta el llamado de La Purisima en estencion de un sitio de ganado mayor poco mas ó menos segun esplica el titulo q. devidamte. acompaño y demas documentos q. deben obiar en la secretaria del gobierno y en cumplimiento del arto. 2o. del mencionado titulo del juez respectivo me diese la posesion juridica como demuestra tambien, demuestran los adjuntos documentos pero como por desgracia se carece de la exactitud pa. la buena medicion de un terreno pr. no haber un agrimensor q. lo haga con la proligidad 38 q. se merece, se duda si esta medido este rectamente; pr. lo que resulta dentro de los limitos mensionados un sobrante de los mil varas antes de llegar al limite q. señale que el Arroyo de La Purisima rumbo S. pr. lo q. suplica á la clemencia de V. E. se digne darme la confirmacion del sobrante q. resulte, pues á causa de esto se ha querido escluirme de ese pedaso q. sobra, cuando ha sido solisitado pr. el que subscrive primeramte. Por tanto A. V. E. pido y suplico provea en sustancia como llebo pedido de lo q. le vivere eternamente reconocido juranbo no ser de malicia y lo necessario ja.

S. Fran'co, 4 de Oct'bre, de 1844.

CANDELARIO MIRAMONTES.

Como dispone el Exmo. Sor Gobernador pase esta instancia al Sor Alcalde 1o. de San Francisco para que informe previa citacion de los colindantes y evacuado q. sea buelva á esta secria. para los efectos que corresponden.

Sello tercero, dos reales.—Habilitado provicionalmente por la aduana maritima del puerto de Monterey en el departamento de las

Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MA. OSIO.
JIMENO.

39 Revalidado para los años de 1842 y 1843.

ALVARADO.

Monterey, Octubre 14, de 1844.

MANUEL JIMENO.

Llamados los colindantes Don Tiburcio Vasquez y Don José Ant'o Alviso el primer dijo que no habia en contra y que siempre habia entendido el rancho del Sr. Miramontes de ser desde arroyo á arroyo y que de estender el rancho del Sr. Alviso en el modo que pide sera de mucho perjuicio como no que dara una lindera clara—el segundo protesta contre el pedido y dice que el es el propietario de dicho terreno y siendo sus papeles y titulo en Monterrey he referido los dos hasta alla para q. se presenta sus titulos respectivos.

Pueblo de San José de Guadalupe, Octubre 27, 1844.

GUILLERMO HINCKLEY.

YERBA BUENA 15, *de* 1846.

En virtud de no saber la vedificacion de Dn. José A. Alviso segun el prest'e Dn. Vicente Miramontes pero á la sub. prefectara para q. se sirba decirme la objecion q. debo á ser a darle á la presente el giro que corresponde á la jurisdiccion q. pertenesca.

J. DE JESUS NOE.

Sor juez 1o. propietario Vicente Miramontes vesino de esta jurisd'on digo ante V. Como mas haga lugar se presentado siendo que el Sor José Antonio Albiso á tratado esigunos atropellar me sin bienes en el Pueblo de La Purisima barbelchando asia cuatro dias al que abran trabajado cuando llego el dcho. Sor Albiso y se les ebito el que estubieran trabajando la tierra le digo á mis servientes q. el terreno era de el que se retiraran de alli al mismo instante me mandaron á visar los servientes q. los habian corrido de el arrollo de la purisima y á linstante q. se retiraran los gaunes empeso á Barbecuar el Sor José Antonio sobre de mi misma tierra cultivada

En virtud de eso pido le manifieste los documentos del dicho terreno arollo de la purisima yara q. di ya á ver quien se lo consedio este dicho parage.

A. V. suplico se sirba hacer como pido en lo que recibire justicia.

Yerba Buena, Abril 5, de 1846.

VICENTE MIRAMONTES.

YERBA BUENA, *Abril* 16, *de* 1846.

En virtud de haberma orden del sor prefecto pa. q. D. José A. Alviso se presente en la prefectura en Monterey é presentar los documentos q. tenga pr. haverce introducido en el parage entre los linderos del terreno pedido por el finado Cand'o Miramontes pr. ante el sor prefecto efta pa. su determinacion.

FRANC'O GUERRERO.

41 *Sor Prefecto de este distrito:*

José A. Miramontes por si y á nombre de sus hermanos menores y demas familia ante la justificacion de V. S. como mejor proceda en derecho dijo: Que haviendosele concedido en propiedad y con justo titulo á mi finado padre Dⁿ Candelario Miramontes el parage conocido con el nombre de Arroyo de los Pilarcitas hasta el llamado de La Purisima segun demuestran los adjuntos documentos que debidantᵉ acompaño A. V. S. y teniendo una cuestion pendiente con Dⁿ José Anto: Alviso hace algun tiempo por decir este tener en gerencia en el mencionado terreno y ser de su propiedad una parte del enunciado terreno; ocarro á la clemencia de V. S. para q. se digne dar sus ordenes á donde convengan pª q. á la mayor brevedad posible se presente con sus documentos d'ho alvisu en este punto en donde V. S. podra impartorla justicia que imploro por los grandicimos perjuicios que hemos estado sufriendo todos los herederos por causade este individuo, queriendo continamente parar nuestros trabajos que tenemos emprendidos y sin motivo que se le considere justo de lo que resultara si no se le pere endique á este hombre por su benacidad y notables perjuicios que sufro, tal vez, ocacionara alguna desgracia que me he propuesto siempre costar.

Por otra parte no es la primera vez que me he presentado contra d'ho Sor y he tenido q. abandonas mis trabajos poniendome
42 en marcha hasta este punto y nunca he podido conseguir que el espresado alviso compresca pª terminas esta consecion.

Por tanto á V. S. pido y suplico provea como llebo pedido de lo que espero recibir gracia y merced que juro lo necesario &c., dispensando V. S. el uso del papel comun por no haber en este lugar del sellado que corresponde.

Monterey, Abril 13 de 1846.

JOSÉ A. MIRAMONTES.

Filed in office Jan'y 22, 1853.

GEO. FISHER, *Sec'y.*

43 *Translation of original espediente annexed to dep. of N. A. Den.*

EXCELLENT SR. GOVERNOR: I, Candelario Miramontes, a native of this department, and resident in the jurisdiction of S. Francisco, before your high equity as best may be consistent with law, say that there is a space of three years since I have been possessing, with a just title, the location called Arroyo de las Pilarcitas, whereon I have built a house and have an orchard, farming, and corrals, etc., as I shall be able to justify in case of necessity; the principal boundaries being such as I from the beginning solicited from the mentioned creek called De la Purissima, in extent one square league, a little more or less, as expressed in the title deed, which I duly annex, and other documents which must be on file in the secretary's office of the government; and in compliance with the 2d article of the said title deed, the respective judge should give me juridical possession, as also is shown by the adjoined documents, but unfortunately there is a want of exactness in the good mensuration of a tract of land on account of there being no land surveyor, who might do it with the

Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MA. OSIO.
JIMENO.

39 Revalidado para los años de 1842 y 1843.

ALVARADO.

Monterey, Octubre 14, de 1844.

MANUEL JIMENO.

Llamados los colindantes Don Tiburcio Vasquez y Don José Ant'o Alviso el primer dijo que no habia en contra y que siempre habia entendido el rancho del Sr. Miramontes de ser desde arroyo á arroyo y que de estender el rancho del Sr. Alviso en el modo que pide sera de mucho perjuicio como no que dara una lindera clara—el segundo protesta contre el pedido y dice que el es el propietario de dicho terreno y siendo sus papeles y titulo en Monterrey he referido los dos hasta alla para q. se presenta sus titulos respectivos.

Pueblo de San José de Guadalupe, Octubre 27, 1844.

GUILLERMO HINCKLEY.

YERBA BUENA 15, *de* 1846.

En virtud de no saber la vedificacion de Dn. José A. Alviso segun el prest'e Dn. Vicente Miramontes pero á la sub. prefectara para q. se sirba decirme la objecion q. debo á ser a darle á la presente el giro que corresponde á la jurisdiccion q. pertenesca.

J. DE JESUS NOE.

Sor juez 1o. propietario Vicente Miramontes vesino de esta jurisd'on digo ante V. Como mas haga lugar se presentado siendo que el Sor José Antonio Albiso á tratado esigunos atropellar me sin bienes en el Pueblo de La Purisima barbelchando asia cuatro dias al que abran trabajado cuando llego el dcho. Sor Albiso y se les ebito el que estubieran trabajando la tierra le digo á mis servientes q. el terreno era de el que se retiraran de alli al mismo instante me mandaron á visar los servientes q. los habian corrido de el arrollo de la purisima y á linstante q. se retiraran los gaunes empeso á Barbecuar el Sor José Antonio sobre de mi misma tierra cultivada

En virtud de eso pido le manifieste los documentos del dicho terreno arollo de la purisima yara q. di ya á ver quien se lo consedio este dicho parage.

A. V. suplico se sirba hacer como pido en lo que recibire justicia.

Yerba Buena, Abril 5, de 1846.

VICENTE MIRAMONTES.

YERBA BUENA, *Abril* 16, *de* 1846.

En virtud de haberma orden del sor prefecto pa. q. D. José A. Alviso se presente en la prefectura en Monterey é presentar los documentos q. tenga pr. haverce introducido en el parage entre los linderos del terreno pedido por el finado Cand'o Miramontes pr. ante el sor prefecto efta pa. su determinacion.

FRANC'O GUERRERO.

41 *Sor Prefecto de este distrito:*

José A. Miramontes por si y á nombre de sus hermanos menores y demas familia ante la justificacion de V. S. como mejor proceda en derecho dijo: Que haviendosele concedido en propiedad y con justo titulo á mi finado padre Dⁿ Candelario Miramontes el parage conocido con el nombre de Arroyo de los Pilarcitas hasta el llamado de La Purisima segun demuestran los adjuntos documentos que debidantᵉ acompaño A. V. S. y teniendo una cuestion pendiente con Dⁿ José Anto: Alviso hace algun tiempo por decir este tener en gerencia en el mencionado terreno y ser de su propiedad una parte del enunciado terreno; ocarro á la clemencia de V. S. para q. se digne dar sus ordenes á donde convengan pᵃ q. á la mayor brevedad posible se presente con sus documentos d'ho alvisu en este punto en donde V. S. podra impartorla justicia que imploro por los grandicimos perjuicios que hemos estado sufriendo todos los herederos por causade este individuo, queriendo continamente parar nuestros trabajos que tenemos emprendidos y sin motivo que se le considere justo de lo que resultara si no se le pere endique á este hombre por su benacidad y notables perjuicios que sufro, tal vez, ocacionara alguna desgracia que me he propuesto siempre costar.

Por otra parte no es la primera vez que me he presentado contra d'ho Sor y he tenido q. abandonas mis trabajos poniendome
42 en marcha hasta este punto y nunca he podido conseguir que el espresado alviso compresca pᵃ terminas esta consecion.

Por tanto á V. S. pido y suplico provea como llebo pedido de lo que espero recibir gracia y merced que juro lo necesario &c., dispensando V. S. el uso del papel comun por no haber en este lugar del sellado que corresponde.

Monterey, Abril 13 de 1846.

JOSÉ A. MIRAMONTES.

Filed in office Jan'y 22, 1853.

GEO. FISHER, *Sec'y.*

43 *Translation of original espediente annexed to dep. of N. A. Den.*

EXCELLENT SR. GOVERNOR: I, Candelario Miramontes, a native of this department, and resident in the jurisdiction of S. Francisco, before your high equity as best may be consistent with law, say that there is a space of three years since I have been possessing, with a just title, the location called Arroyo de las Pilarcitas, whereon I have built a house and have an orchard, farming, and corrals, etc., as I shall be able to justify in case of necessity; the principal boundaries being such as I from the beginning solicited from the mentioned creek called De la Purissima, in extent one square league, a little more or less, as expressed in the title deed, which I duly annex, and other documents which must be on file in the secretary's office of the government; and in compliance with the 2d article of the said title deed, the respective judge should give me juridical possession, as also is shown by the adjoined documents, but unfortunately there is a want of exactness in the good mensuration of a tract of land on account of there being no land surveyor, who might do it with the

minuteness it requires; it is doubted if this may be measured
44 right, since there results, within the mentioned limits, a surplus of two thousand varas before reaching the limit I marked out, which is the Arroyo de la Purissima in a southern direction.

Wherefore, I pray your excellency's clemency to be pleased to give me the confirmation of the surplus that may result, since, on reason hereof, people have chosen to exclude me from the remaining piece, when it has first been solicited by the subscriber.

Therefore, I ask and pray you to provide for the substance of this petition, whereby I shall ever remain obliged to you, swearing there is no malice herein, and to what else necessary.

S. Francisco, October 4th, 1844.

CANDELARIO MIRAMONTES.

(In the margin:) MONTEREY, *October* 14, 1844.

The secretary of state will report, and if necessary ask for other reports.

MICHELTORENA.

As ordered by the excellent Sr. Governor, let this instance be referred to the 1st alcalde of San Francisco, that he may report,
44 after previous summons of the bordering land-owners; and when thus finished, return it to this secretary's office for the corresponding action.

Monterey, Oct. 14th, 1844.

MAN. JIMENO.

The bordering land-owners, Don Tiburcio Vasquez and Don José Anto. Alviso, being called, the first named said that he had no opposition, and that he had always understood the Rancho del Co. Miramontes to be from creek to creek, and that to extend the rancho of Mr. Alviso in the mode he asks will be of much injury, as there will remain no clear boundary. The second named protests against the petitions, and says that he is the proprietor of said land; and their papers and deeds being in Monterey, I have referred them both thither, that they may present their respective titles.

Pueblo de San José Guadalupe, October 27th, 1844.

GUILLERMO HINCKLEY.

To the 1st justice:

Proprietary, Vicente Miramontes, a resident of this jurisdiction, as best may be consistent with law, presents himself before you, saying that Mr. José Antonio Alviso has attempted to go trespassing on
46 our rancho and prejudice us while my servants were on the Arroyo de las Purissima ploughing. They had worked four days, when said Mr. Alviso came and prevented them from working. He told my servants that the land belonged to him, and they retired therefrom. At the same instance they ordered me to inform the servants that they had run from the Arroyo de la Purissima, and on their appearing the laborers retired, whereupon José Antonio commenced to plough on the same cultivated lands of mine.

On account hereof, I ask that he may show his documents to the said land, Arroyo de las Purissima, to see whether any one has granted him said location.

I pray you to be pleased to do as asked, for whereby I shall receive justice.

Yerba Buena, April 5th, 1846.

VICENTE MIRAMONTES.

(In the margin:) YERBA BUENA, 15*th of* ——, 1846.

On account of not knowing the residence (N. B., redification,) of José Alviso as represented by Vicente Miramontes, let this be
47 referred to the sub-prefecture that it will please to sell me the objection I ought to make to the present, or give it the circulation corresponding to the jurisdiction he may belong to.

J. DE JESUS NOÉ.

YERBA BUENA, *April* 16, 1846.

There being an order from the prefect to D. José A. Alviso to present himself in the prefecture in Monterey, to produce the documents he may have for having introduced himself on the location between the boundaries of the land asked for by the deceased citizen Miramontes, let this be referred to the prefect for his determination.

FRCO. GUERRERO.

SIR PREFECT OF THIS DISTRICT: José A. Miramontes, for himself, and in the name of his minor brothers and other family, as best may be consistent with law, says, before your equity, that my deceased father, Candelario Miramontes, having been granted, in ownership and with a just title, the location known by the name of Arroyo de la Pilarcitos to the arroyo called De la Purissima, as is shown by the ad-
48 joined documents which I duly accompany to you, and having since some time ago pending a question with José Anto. Alviso, on account of his saying the mentioned land to be included in his own, and a part of said land to be his property—

I apply to your clemency to be pleased to give your orders that, in a place most convenient in this point for the more brevity possible, said Alviso present himself with his documents, when you will be enabled to impart the justice I pray for on reason of the very grand injuries all the heirs have been suffering for the sake of this individual wanting continually to stop our works which we have undertaken, and that without any just cause, wherefrom there will result some misfortune, which I have always proposed to avoid, if there be not put a dike for this man's tenacity and notable injuries.

On the other hand, it is not the first time that I have presented myself against said gentleman, and I have had to abandon my works, setting out on a journey to this point, and I have never been
49 able to attain that said Alviso be summoned to terminate this question.

Therefore I ask and pray you to provide, as hereinbefore asked for, whereby I expect to receive favor and mercy, swearing to the necessary,

etc., while you will dispense with the use of common paper, there being no corresponding stamped paper in this place.

Monterey, April 13th, 1846.

JOSÉ A. MIRAMONTES.

Filed in office Sept. 6, 1853.
(Signed) GEO. FISHER, *Sec'y.*

50 B.—*Translation of espediente and grant.*

Juan B. Alvarado, constitutional governor of the department of the Californias:

Whereas the citizen Candelario Miramontes, a Mexican by birth, has solicited, for his personal benefit and that of his family, a tract of land situated between the creek of the Little Pulves, "Los Pilarcitos" on the north, that of La Purissima on the south, the ridge of mountains "La Sierra" on the east, and the bay on the west, pertaining to the establishment of San Francisco, having first taken such action and made such investigations as were requisite, according to the requirements of the laws and regulations, using the powers which are in me vested, in the name of the Mexican nation, I have come by decree of this day to cede to said Candelario Miramontes the land aforesaid, declaring it his property by these letters, subject to the approval of the E. departmental assembly and under the following conditions:

1st. He may enclose it without prejudice to the ways and servitudes. He will enjoy it freely and exclusively, appropriating it to
51 such use and culture as may best suit him, but within one year he shall build a house, and it shall be inhabited.

2d. When he shall come to take charge of the property he will solicit of the justice that he give him juridical possession by virtue of this dispatch, by whom the boundaries will be indicated, where he will place, besides the landmarks, he will place some fruit trees or some useful forest trees.

3d. The land thus donated is of one square league, a little more or less, as is exhibited by the map in the expediente. The judge who shall give juridical possession will have it measured according to ordinance to indicate the boundaries.

4th. If he shall violate these conditions, he will lose his right to the land, and it will be denounciable by another.

Consequently I order that these presents, serving him as a title, and being held firm and valid, an entry thereof be made in the corresponding book and the same be delivered to the party for his protection and other ends.

52 Given in Monterey this second day of January, eighteen hundred and forty-one.

JUAN B. ALVARADO.

MAN'L JIMENO, *Scrio.*

Entry has been made of this title at folio 4th of the corresponding book of the matter of public lands.

JIMENO.

Filed in office Sept. 22, 1852.
(Signed) GEO. FISHER, *Sec'y.*

53 *Affidavit.*

STATE OF CALIFORNIA,
County of San Francisco:

Adolfo Miramontes, being duly sworn, deposeth and saith that, in the year 1846, Candelario Miramontes, the grantee named in this case, has died, leaving as his children and heirs the following persons, to wit: Vicente Miramontes; Ignacio M'o; Bernardo, an infant son of Mirano Miramontes, deceased, who was a son of said Candelario; Adolfo, this deponent; Arsenio; José de los Santos; Raimundo; Juan José; Guadalupe; also Ramona, married to Vicente Rivera; zales, all of whom are living upon the land petitioned for. And fur- Dolores, married to Stanislaus; Carmel, married to Francisco Gonther saith not.

his
ADOLFO + MIRAMONTES.
mark.

Sworn to and subscribed before me this 19th October, 1853.
THOMPSON CAMPBELL, *Com'r.*

54 354.

In this case, on motion of Clarke, Taylor & Beckh, attornies, and upon reading the foregoing affidavit, it is ordered that the following persons be substituted as claimants in the place of Candelario Miramontes, viz: Vicente Miramontes, Ignacio Miramontes, Bernardo Miramontes, Adolfo Miramontes, Arsenio Miramontes, José de los Santos Miramontes, Raimundo Miramontes, Juan José Miramontes, Guadalupe Miramontes, Ramona Rivera Miramontes, Dolores Stainslaus Miramontes, and Carmel Gonzales Miramontes.

Filed in office Oct. 25, 1853.
(Signed) GEO. FISHER, *Sec'y.*

55 *Affidavit.*

VICENTE MIRAMONTES AND OTHERS.—354.

Arsenio Miramontes, one of the claimants in this case, maketh oath that he is prepared to prove, by numerous witnesses, that the tract of land claimed in this case has been occupied by the late Candelario Miramontes and his children, the present claimants, for the last twelve years; that said Candelario built a house upon the land within a year after obtaining the grant filed in this case; that he took up his resi-

dence thereon during said year, and continued to reside there with his wife and children till the time of his death, in 1848; that since his death his widow and all of his children, viz: the present claimants, eleven in number, have lived upon the land with their families, occupying thirteen dwelling-houses which they have erected upon said tract at various times since the grant; that affiant was not advised of the necessity of making proof of these facts till since this case was submitted; that, in fact, none of the claimants were aware that any other proofs were needed in the case than those offered by
56 the papers filed.

ARSENIO MIRAMONTES.

Subscribed and sworn to before me this 31st October, 1853.

ALPHEUS FELCH,
Commissioner.

Upon the foregoing affidavit the claimants moved the board to open the case for further proofs of possession and improvement.

J. CLARKE, *Att'y.*

Filed in office Oct. 31, 1853.
(Signed) GEO. FISHER, *Sec'y.*

57 VICENTE MERAMONTES *et al.*, the heirs-at-law of Candelario Miramontes, dec'd, *vs.* THE UNITED STATES. } For a tract of land containing one square league in San Francisco county.

Opinion of the board by Com'r Felch.

The petition was originally filed in this case in the name of Candelario Miramontes, and on suggestion of his death, and on the application of the claimants' attorneys, the names of his heirs were substitued on the record.

A grant to said deceased, issued by Governor Alvarado, dated January 2d, 1841, is presented and duly authenticate. It is also proved that the grantee built a house on the land in 1840; took his stock on to the premises; built corrals, and commenced the cultivation of the land; and that he moved into the house with his family, and continued to reside there until his death; that his family was large, and his children have built houses on the premises, and continued to reside there to the present time, engaged in agricultural pursuits and in the cultivation of different portions of the land.

58 In the grant the premises solicited are described as situated between the Arroyo de los Pilarcitos on the north; that of La Purissima on the south; the sierra on the east; and the sea on the west. The quantity of land granted was one square league, a little more or less, and the grantee was required to obtain judicial measurement.

The proof shows that a short time after the grant was obtained he procured judicial possession to be given to him by Francisco Sanchez, an alcalde; that they measured the land from the northern boundary to the south, and terminated their line at a gulch running out to the sea, at a place called Cañada Verde, which gulch they established as the southern boundary of the rancho; they also measured back from the sea in an easterly direction on both the north and south side of the rancho about half a league, and one of the witnesses testifies that the alcalde then informed Miramontes that he could extend his lines further in that direction among the hills until he made up the full quantity of one league.

59 It is also in proof that Miramontes was himself present at this official measurement, and, after it was made, expressed his satisfaction with it, and said it was all right.

From the deposition of one of the persons who was present as an assisting witness, it would appear that that probably was no testimonial of these official acts prepared in the usual form. The testimony of three of the persons who were present, however, leaves no doubt of their performance by the proper officer, and with due formality.

The premises thus assigned to Miramontes under his grant are defined with sufficient certainty to segregate the land. Bounded on the north by the Arroyo de las Pelarcitos; on the south by the gulch or Sanjon de Cañada Verde; it extends back from the sea on the west far enough to embrace one square league of land. If, however, the sierra should be intercepted before the quantity is made up, the eastern limits must be terminated thereby. The grant gives no authority to extend beyond the sierra as the eastern boundary.

60 The line as fixed by the alcalde on the south, making De Cañada Verde the boundary instead of the Arroyo de la Purissima, leaves a strip of land between the two, which appears to have been a subject of controversy between Miramontes and José Antonio Alviso, who claimed to be the owner of the premises on the south side of the claim now under investigation. There is no evidence before us that Alviso had any title to the land in dispute, and as to Miramontes, the line established by the alcalde excluded it from his premises. The official act of this officer establishing this line as a boundary, done under the Mexican laws, and at the request of Miramontes, and in the most solemn manner, and with the acquiescence and approval of the same at the time he received the formal possession under his grant, we think must be conclusive upon his rights. In October, 1844, he presented to the governor a petition, alluding to the measurement above mentioned, and alleging that there resulted a surplus, within the limits specified in his grant, of two thousand varas in width on the south side, and praying for a grant of this sobrante. No final action of the government seems to have been had on this petition, and we think the ownership of the

61 premises in dispute cannot, on the showing in the case, be regarded as the property of Miramontes.

A decree will be entered confirming the claim of the petitioners,

limiting the premises to the Sanjon de Cañada Verde on the south, and bounded on the east as above specified.

Confirmed.

Filed in office Feb'y 6, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Record of Decisions, vol. 2, page 524.

GEO. FISHER, *Sec'y.*

62 VICENTE MIRAMONTEZ & *al.*, heirs-at-law of Candelario Miramontez, dec'd, *vs.* THE UNITED STATES. } Decree.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said Vicente Miramontes and others, the heirs-at-law of Candelario Miramontes, deceased, is valid, and the same is therefore hereby confirmed to them as such heirs.

The land of which confirmation is hereby made is situated in San Francisco county, and is the same formerly occupied by said Candelario Miramontes, and is bounded as follows, to wit:

Bounded on the north by the Arroyo de las Pilarcitos; on the south by the gulch or Sanjon de Canada Verde; on the west by the Pacific ocean, and on the east by the sierra; but if, on actual measurement, the land thus described shall be found to comprise more then one square league of land, the eastern limits shall be, instead of the sierra, a line parallel with the sea-coast, and at such a distance from it as, with the same and the north and south
63 boundaries, above mentioned, shall comprise one square league of land.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARMELL,
Commissioners.

Filed in office Feb. 6, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Record of Decisions, vol. 2, p. 526.

GEO. FISHER, *Sec'y.*

64 *Order.*

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern judicial district of California, and the other be transmitted to the Attorney General of the United States.

65 *Secretary's certificate.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMANTS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing fifty-two pages, numbered from 1 to 52, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 354 on the docket of the said board, wherein Candelario Miramontes is the claimant against the United States for the place known by the name of "land in Santa Clara county."

In testimony, whereof I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this tenth day of August, A. D. 1855, and of the independence of the United States of America the eightieth.

[SEAL.] GEO. TUCKER, *Sec'y.*

66 Endorsed: Filed August 11, 1855.
J. A. MONROE, *Clerk.*

67 *Notice of appeal.*

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 10 *October*, 1855.

354.—"Land in Santa Clara county," Candelario Miramontes, claimant.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 27th day of August, 1855, the appeal in the district court of the United States for the northern district of California, will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: Filed November 22d, 1855.
JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

68 *Petition.*

THE UNITED STATES
v.
CAND'O MIRAMONTES } D. C. 269. L. C. 354.

To the hon. dist. court of the U. S. in and for the northern dist. of Cala.:

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the U. S. land commission, whereby the claim of the appellee was confirmed, as appears by reference to the record in the case; that a transcript of said record was filed in this court on the 11th day of August, 1855; that a notice of appeal was filed on the 22d day of November, 1855; and that the land claimed lies in the said district; that the said claim is invalid. Wherefore, appellants pray that the said decision of the commission be reversed, and that this court decree the said claim invalid.

San Francisco, Feb'y 12, 1857.

WM. BLANDING,
U. S. Att'y.

Endorsed: Filed February 12th, 1857.
JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

69 *Answer and cross-petition.*

District court of the U. States, northern district of California.

VICENTE MIRAMONTES *et al.*, claimants,
vs.
THE UNITED STATES.

The claimants in the above entitled cause, for answer to the petition filed herein, say that their title to the tract of land confirmed by the board of land commissioners is valid, and they ask that the same may be confirmed.

And for a cross-petition in this cause said claimants say that the original grant under which these claimants claim title to the tract of land for which they asked a confirmation by the board of commissioners in this cause were on the north the arroyo or creek called Pilarcitos, on the south the arroyo called Purissima, on the east the ridge of mountains, and on the west the Pacific ocean; that no portion of the land embraced in said boundaries has ever been made by the Mexican or California government, except the grant to the ancestor of claimants, viz: Candelario Miramontes; that no juridical possession was ever given of said land, although an experimental and imperfect measurement of a portion of the distance from one of
70 said creeks to the other was at one time made with a riata and on horseback. Claimants insist that their title to all of the tract within said boundaries, as well that excluded from the confirma-

tion of said board as that included therein, is good. They therefore ask for a confirmation of their claim according to the boundaries set forth in the original grant to their said ancestor.

J. CLARKE.

Endorsed: Filed February 12th, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

71 *Decree.*

District court of the United States for the northern district of California.

THE UNITED STATES
vs.
VICENTE MIRAMONTES *et al.* } No. 269.

Stated term, February 16th, 1857.

This cause coming on to be heard upon the transcript of the record thereof, before the board of commissioners of the United States for the ascertainment and settlement of private land claims in California, and upon the petitions and answers filed in said cause in this court, and argument of counsel for the United States, and for claimants having been heard, this court is of opinion that the title of claimants is valid, and should be confirmed to one square league of land within and according to the original grant thereof to Candelario Miramontes, as set forth in said transcript.

It is therefore ordered, adjudged, and decreed by this court that the claim of claimants, viz: Vicente Miramontes, Ignacio Miramontes, Bernado Miramontes, Adolfo Miramontes, Arsenio Miramontes, José de los Santos Miramontes, Raimundo Miramontes, Juan José
72 Miramontes, Guadalupe Miramontes, Ramona Rivera Miramontes, Dolores Stanislaus Miramontes, and Carmel Gonzales Miramontes, be, and the same is hereby, confirmed to the extent of one square league of land within the following boundaries, viz: On the north by the Arroyo de los Pillarcitos, on the east by the sierra, on the south by the Arroyo de la Purissima, and on the west by the Pacific ocean.

OGDEN HOFFMAN,
U. S. Dist. Judge.

This decree conforms to the boundaries set forth in the grant to the claimant, and is in accordance to the views entertained by the district court on the hearing of the appeal from the land commission.

WM. BLANDING,
Dist. Att'y.

Endorsed: Filed February 16th, 1857.
JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

73 CALIFORNIA LAND CLAIMS,
Attorney General's Office, Jan'y 27, 1857.

SIR: In the case of the claim of Candelario Miramontes, confirmed to the claimant by the commissioners, case No. three hundred and fifty-four, (354,) appeal will not be prosecuted by the United States.

I am, respectfully,

C. CUSHING.

WM. BLANDING, Esq.,
U. S. Attorney, San Francisco.

Stipulation.

In the district court of the U. S. for the northern district of Cala.

THE UNITED STATES
v.
CANDELARIO MIRAMONTES. } D. C. 269. L. C. 354.

In pursuance of a notice from the U. S. Attorney General, hereunto annexed, it is hereby stipulated and agreed that no further appeal be taken in this case on the part of the United States, and that claimant have leave to proceed under the decree of this court heretofore rendered in his favor as under final decree.

San Francisco, March 21st, 1857.

WM. BLANDING, *Dist. Att'y.*
J. CLARKE, *Att'y for Claimant.*

74 Endorsed: Filed March 21st, 1857.
JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Order vacating appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Saturday, the 21st day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
CANDELARIO MIRAMONTES. } D. C. 269. L. C. 354.

75 The Attorney General of the United States having given notice that no further appeal will be taken in this case, and the U. S. Attorney General having entered into a stipulation to that effect, on motion of the district attorney, it is ordered, adjudged, and decreed that claimant have leave to proceed under the decree of this court heretofore rendered in his favor as under final decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed March 21st, 1857.
JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

76 *Order reforming decree.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the 25th day of May, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
VICENTE MIRAMONTES *et al.* } No. 269.

On motion of the U. S. district attorney, and the counsel for the claimant having been heard, it is ordered that the decree in this case filed Feb'y 16, 1857, be so altered and amended as to read, "be, and the same is hereby, confirmed to the extent of one square league of land within the following boundaries."

Endorsed: Filed May 25th, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

77 *Substitution of attornies.*

District court of the United States for the northern district of California.

THE UNITED STATES
v.
C. MIRAMONTES and the heirs of C. Miramontes.

Messrs. McDougall & Sharp, attorneys, are hereby substituted as attorneys on part of defendants in the above entitled action instead of Messrs. Clarke, Taylor and Beckh, attorneys of record, and are fully authorized and empowered to prosecute and attend to all further proceedings, &c., in said action.

Dated San Francisco, June 1st, A. D. 1857.

ARSENIO MIRAMONTES.

You will please take notice that we have been this day duly substituted as attorneys for the defendants in the above entitled action, as appears by the above substitution.

Dated June 2d, 1857.

McDOUGALL & SHARP, *Attorneys.*

To the clerk of said U. S. district court.

We hereby acknowledge due service and a copy of the within substitution, &c.

Oct. 16th, 1857.

P. DELLA TORRE, *U. S. Att'y.*
D. LAKE, *of Counsel.*

78 Endorsed: Filed October 17th, 1857.
JOHN A. MONROE, *Clerk*,
By J. EDGAR GRYMES, *Deputy*.

Affidavit of J. A. McDougall.

District court of the United States for the northern district of California.

THE UNITED STATES
vs.
VICENTE MIRAMONTES *et al.*

STATE OF CALIFORNIA,
Northern District, ss:

James A. McDougall, being duly sworn, says that he is, and at the times hereinafter mentioned was, an attorney and counsellor of said court.

That the firm of McDougall & Sharp, attorneys, &c., of which affiant is a member, from a long time previous to the happening of the matters hereinafter stated were, and still continue to be, the attorneys of the claimants in the above entitled cause.

That heretofore, to wit, on the 16th day of February, 1857,
79 a final decree was entered in this cause, which decree was in the words and figures as set forth in the copy thereof hereunto annexed and marked "A."

That thereafter, upon the affidavit of Connolly, on file in this cause, the district attorney for the United States moved said court to amend the said decree; and notice of motion having been served on Jeremiah Clark, esq., the attorney of record (but not in fact) of claimants, the same was heard on the day of , whereupon the court granted the said motion.

The first notice of this proceeding received by affiant was through the newspapers, as affiant thinks, on the following day. On the same day affiant proceeded to enquire into the matter, first at the clerk's office, and then at the office of the U. S. district attorney. Wm. Blanding, esq., the attorney for the United States, then informed affiant that the motion had been made at the instance of a third party, and referred affiant to Lewis Blanding, esq., as representing the adverse party in interest. Mr. Lewis Blanding, and affiant, proceeded to the chambers of the judge of the said court, when and where affiant represented to the said judge that the said Jeremiah
80 Clarke was not the acting attorney of the said claimants, and, on the part of the said claimants, protested against said amendment without a further hearing. After a considerable discussion on the subject, the said judge made enquiry as to whether or not said amendment had been made, or the said order of amendment had been entered, and he was then and there informed that said amendment had not been made or order entered up. Whereupon the said judge stated that the decree should stand without amendment, and the said order or amendment should not be entered or made; andthe said judge,

then and there, in the presence of the said Lewis Blanding, esq., and affiant, gave instructions to that effect.

Affiant further says that, believing the said decree still remained as originally signed, recently, and within the past month, he procured from the clerk's office a certified copy of the decree herein, and, upon examination, found it different in terms and substance from the original decree; whereupon he made enquiry at the clerk's office, and found filed in the office a paper purporting to be an order of amendment unsigned by the judge. Upon examining the original

81 decree, however, he found that the amendments provided for in said unsigned papers, purporting to be an order of amendment, had by erasures and interlineations been introduced into the original decree on file, such erasures and interlineations making the modification of the decree sought for by the motion hereinbefore mentioned.

Affiant further says that on the day and at or about the time of the said interview with the said judge, affiant examined the files in this cause, and the original decree made herein, and that he did not observe, or in any way learn, that the said decree had been in any respects changed.

This affiant further says that he communicated to the said Wm. Blanding, esq., then district attorney, the result of said interview with the said judge, and that he made no objections thereto, and that affiant suggested and proposed then to the said district attorney that the entire decree should be opened, so that upon a further hearing the court might pronounce such decree as should be rendered in the premises, and one which would remove all ambiguity, but was informed that he could not give consent, but the claimants might move the court for the opening of the decree.

82 That upon a careful consideration of the decree, (being of the opinion that the proper construction thereof gave to claimants their entire claim,) affiant took no further steps in regard to the decree until, as before stated, he called for a certified copy thereof.

Affiant further says that he makes this affidavit not for the purpose of moving herein, further than to suggest to the court that the decree as it now appears of file, with erasures and interlineations as aforesaid, and which does not appear to be entered up of record either as an original decree or as amended, is not the decree of the said court, and that in justice to the said claimants the said decree should stand as originally made, and should be so entered of record.

J. A. McDOUGALL.

Subscribed and sworn to before me this 19th day of October, A. D. 1857.

OGDEN HOFFMAN, *Dist. Judge.*

83 "A."

District court of the United States for the northern district of California.

THE UNITED STATES
vs.
VICENTE MIRAMONTES *et al.* } Decree. No. 269.

Stated term, February 16, 1857.

This cause coming on to be heard upon the transcript of the record thereof before the board of commissioners of the United States for the ascertainment and settlement of private land claims in California, and upon the petitions and answers filed in said cause in this court, and argument of counsel for the United States and for claimants having been heard, this court is of opinion that the title of claimants is valid, and should be confirmed to one square league of land, within and according to the original grant thereof to Candelario Miramontes, as set forth in said transcript.

It is therefore ordered, adjudged, and decreed by the court that the claim of claimants, viz: Vicente Miramontes, Ignacio Miramontes, Bernado Miramontes, Adolfo Miramontes, Arsenio Miramontes, José de las Santos Miramontes, Ramundo Miramontes, Juan José
84 Miramontes, Guadalupe Miramontes, Ramona Rivera Miramontes, Dolores Stanislaus Miramontes, and Carmel Gonzales Miramontes, be, and the same is hereby, confirmed to one square league of land bounded as follows, viz: on the north by the Arroyo de los Pilarcitos, on the east by the sierra, on the south by the Arroyo de la Purissima, and on the west by the Pacific ocean.

(Signed) OGDEN HOFFMAN,
U. S. Dist. Judge.

This decree conforms to the boundaries set forth in the grant to the claimants, and is in accordance to the views entertained by the district court in the hearing of the appeal from the land commission.

(Signed) WM. BLANDING,
Dist. Atty.

Endorsed: Filed February 16, 1857.
W. H. CHEVERS, *Deputy.*

Endorsed: Filed October 19th, 1857.
JOHN A. MONROE, *Clerk,*
By J. EDGAR GRYMES, *Deputy.*

85 *Order.*

District court of the United States for the northern district of California.

THE UNITED STATES
vs.
VICENTE MIRAMONTES *et al.* }

It being suggested to the court that the erasures and interlineations in the decree of file in this cause were not part of the original

decree herein, and that after the motion to amend herein, and after the opinion of this court expressed granting said proposed amendment, this court directed and ordered that no such amendment should be made, and, such being the facts, the said motion would still remain pending; upon motion of claimants, the district attorney for the United States appearing and consenting thereto, it is ordered that the said motion to amend stand for hearing in this court, and that the court, upon a hearing, will make such order as in the opinion of the court should be made in the premises.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed October 19th, 1857.
JOHN A. MONROE, *Clerk.*
By J. EDGAR GRYMES, *Deputy.*

86 *Affidavit of Arsenio Miramontes.*

District court of the United States for the northern district of California.

THE UNITED STATES
vs.
VICENTE MIRAMONTES *et al.*, the heirs of Candelario Miramontes, deceased.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Arsenio Miramontes, being of lawful age, and duly sworn, deposes and says on oath: That he is one of the heirs of Candelario Miramontes, deceased, and as such is one of the claimants in the abovenamed cause. That the said heirs, including this affiant, engaged the services of Jeremiah Clark in said cause; that afterwards, some time in the spring of the present year, affiant paid said Clark in full for his services, and discharged him from further acting for the claimants in said cause. That some time in January or February of 1857 the said heirs, through this affiant, applied to and retained Messrs. McDougall & Sharp to take charge of said matter and to act for the heirs in said cause, and that said McDougall & Sharp are now,
87 and have been since that time, the attorneys for, and duly authorized to appear and act in, said cause for the said heirs. That affiant is informed and believes that said Clark left this State on the steamer of the 5th of November for the Atlantic States, and is now absent from this State.

ARSENIO MIRAMONTES.

Subscribed and sworn to before me this 9th day of November, A. D. 1857.

D. B. HEMPSTEAD,
[SEAL.] *Notary Public.*

Endorsed: Filed November 11th, 1857.
JOHN A. MONROE, *Clerk.*

United States district court, northern district of California.

THE UNITED STATES
vs.
CANDELARIO MIRAMONTES.

A decree in this case having been entered at a former term, a motion was made to amend it so as to remove a doubt as to its construction.

By consent of both parties that motion has been argued at this term, with the understanding that the decision shall be made *nunc pro tunc*, as of the last term, and that decree, as now settled by the court, shall be entered as of the term when the case was decided.

The question presented is whether the grant was for the quantity of one square league or for all the land within the boundaries mentioned.

The petition solicits the place ("*parage*") which is on the coast of San Francisco between (*entre*) Arroyo de los Pilarcitos and that of La Purissima on the north and south, and on the east and west by the sierra and the margin of the sea, being in length a league and a
89 half, more or less, as a large part of it is sterile for want of water, and being in breadth three-quarters of a league. This petition was accompanied by a diseño on which the two arroyos, the sierra, and the sea are rudely delineated.

After obtaining the usual informe the governor made his decree of concession declaring the petitioner owner in property "*dueño en propiedad*" of "one square league between the arroyos of Pilarcitos and Purissima, the sierra, and the sea." The decree directs the corresponding "despacho" to issue a note to be taken in the respective book and the title reserved for the approbation of the departmental assembly.

The documento or title produced by the claimant describes the land as "un terreno" or tract which is ("que se halla") between the Pilarcitos on the north, that of Purissima on the south, the sierra on the east, and the sea on the west

The 3d condition describes it as of the extent of one league, more or less, as explained by the diseño, and requires it to be measured conformably to the ordinance, in order to establish its boundaries. No sobrante is reserved.

90 In the draft or borrador of this document, contained in the expediente and produced from the archives, the land is described *as a league, more or less, between* the arroyos, &c., and the third condition contains the usual sobrante clause, reserving the surplus to the nation.

Since the cause was submitted the case of The United States *vs.* Fossatt has been decided by the Supreme Court. In the grant in that case the words "a little more or less" occur, and their force and effect are passed upon by the court. The court says: "We reject the words a little more or less as having no meaning in a system of location and survey like that of the United States, and that the claim of the grantee is valid for the quantity clearly expressed. If the limitation of the quantity had not been so explicitly declared it might have been proper to refer to the petition and diseño, or to inquire if the name Capitancillos

had any significance as connected with the limits of the tract, in order to give effect to the grant. But there is no necessity for additional inquiries. The grant is not affected with any ambiguities.

91 It would seem, therefore, that the Supreme Court regard the phrase "one league, a little more or less," as so explicit a declaration of the quantity intended to be granted as to render improper any reference either to the petition or diseño, as also any inquiry whether the name of the lands granted was not applied to a specific tract with ascertained and recognized boundaries.

It may be urged that in the case of Fossatt the grant only designated three boundaries, and the fourth had therefore to be determined by the limitation of quantity. But the petition, the diseño, or the name of the tract granted, might have indicated that boundary as certainly as if it had been mentioned in the grant, and information from these sources the Supreme Court holds to be inadmissable, as the limitation of quantity is, in its opinion, explicitly and unambiguously declared. On the authority of this case, therefore, it is clearly the duty of this court to restrict the claim to the precise quantity of one league.

92 The question of its location remains to be considered. It is in proof that some time after the issuance of the grant a judicial measurement of the land was made by Francisco Sanchez, the alcalde. The measurement appears to have been begun at the Arroyo de los Pilarcitos on the north, and terminated at the Cañada Verde, the latter being established as the southern boundary.

The length of this line appears to have been a little over one league, and the alcalde directed the grantee to run back among the hills to make up the quantity of one league granted.

It is not shown that any record of this proceeding was made, but the neighbors and adjoining proprietors, together with Miramontes, were present at the measurement, and it appears to have been conducted in the somewhat loose and informal manner not unusual with the former possessors of this country. Miramontes himself is stated to have expressed his satisfaction with it, and the land to the south of the Cañada Verde and between it and the Arroyo Purissima is stated by Alviso, the colindante of Miramontes on the south, to have ever since remained in his (Alviso's) possession.

93 It is true that in 1844 Miramontes presented a petition to the governor, in which he complains of the incorrectness of this measurement, as it left a surplus of 2,000 varas before reaching the limit marked out by him, viz: the Arroyo de la Purissima. He therefore asks the governor to confirm to him the surplus.

The governor having directed an *informe*, and that the neighbors should be summoned, Tiburcio Vasquez declares that he has no objection; but Alviso protests against the claim of the petitioner, and asserts himself to be the owner of the land asked for.

Miramontes seems subsequently to have made repeated efforts to have his rights judiciously settled, but without success.

It also appears that the settlement and cultivation of Miramontes was at the southern end of the tract and adjacent to the Arroyo de los Pilarcitos.

As the claim of Miramontes can, as already observed, be confirmed

only to the extent of one league, it seems clear that that league should be now surveyed to him, as it was originally measured off by the alcalde, and not on the disputed tract, which he himself speaks of in his petition to the governor as a sobrante or surplus, and which
94 he asks may be confirmed to him in addition to the league measured off to him, but which he does not solicit in lieu of any part of the tract so assigned to him by the alcalde.

The fact that his occupation and settlement were adjoining the Pilarcitos, and that he has always been the undisputed owner and occupant of the league between that stream, the Cañada Verde, the sierra, and the sea, must fix the location of the league to which he is entitled within those limits.

A decree must therefore be entered amendatory of the decree heretofore made, and confirming the claim to the extent and quantity of one square league, to be bounded on the north by the Arroyo de los Pilarcitos; on the south by the Cañada Verde; on the west by the sea. The eastern line to be run from the northern to the southern boundaries, at such distance from the sea as shall be necessary to make up and include within the four boundaries of the tract the quantity of one square league of land.

Endorsed: Filed December 30th, 1858.

W. H. CHEVERS, *Clerk.*

95 *Order amending decree.*

At a stated term of the United States district court for the northern district of California, continued and held at the court-house in the city of San Francisco, on Wednesday, the 23d day of November, A. D. 1859.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
VICENTE MIRAMONTES *et al.* } No. 269.

A motion having been made that the decree heretofore entered in this cause be amended, so as to remove a doubt as to its construction; and counsel having been heard for and against said motion, and the court having heard the arguments of counsel, and due deliberation having been had thereupon:

It is ordered and adjudged by the court that the decree heretofore entered in this case be amended, by striking out all of the same after the words "be, and the same is hereby, confirmed to the extent of one square league of land," and insert in lieu of the portion stricken out the words following, to wit: "to be bounded on the north by the Arroyo de los Pilarcitos; on the south by the Cañada Verde;
96 on the west by the sea. The eastern line to be run from the northern to the southern boundaries at such distance from the sea as shall be necessary to make up and include within the four boundaries of the tract the quantity of one square league of land.

And it is further ordered that an amended decree, in conformity with this order, be entered in said case *nunc pro tunc*, as of the 25th day of May, 1857.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed November 23d, 1859.
W. H. CHEVERS, *Clerk.*

97 *Amended decree.*

At a stated term of the United States district court for the northern district of California, continued and held at the court-house in the city of San Francisco, on the 25th day of May, A. D. 1857.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
VICENTE MIRAMONTES *et al.* } Decree No. 269.

This cause having been brought on to be heard upon the transcript of the record thereof before the board of commissioners of the United States for the ascertainment and settlement of private land claims in California, and upon the petitions and answers filed in said cause in this court, and argument of counsel for the United States and for claimant having been heard, this court is of opinion that the title of claimants is valid and should be confirmed to one square league of land, within and according to the original grant thereof, to Candelario Miramontes, as set forth in said transcript.

It is therefore ordered, adjudged, and decreed by this court
98 that the claim of claimants, viz: Vicente Miramontes, Bernado Miramontes, Adolfo Miramontes, Arsenio Miramontes, José de los Santos Miramontes, Ramoundo Miramontes, Juan José Miramontes, Guadalupe Miramontes, Ramona Rivera Miramontes, Dolores Stanislaus Miramontes, and Carmel Gonzales Miramontes, be, and the same is hereby, confirmed to the extent of one square league of land, to be bounded on the north by the Arroyo de los Pilarcitos, on the south by the Cañada Verde, on the west by the sea. The eastern line to be run from the northern to the southern boundaries at such distance from the sea as shall be necessary to make up and include within the four boundaries of the tract the quantity of one square league of land.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed November 23d, 1859, for May 25th, 1857.
W. H. CHEVERS, *Clerk.*

99 *Order granting appeal.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the

city of San Francisco, on Friday, the 17th day of February, in the year of our Lord one thousand eight hundred and sixty, for the trial of land cases.

Present: The honorable M. Hall McAllister, circuit judge.

VICENTE MIRAMONTES *et als.* vs. THE UNITED STATES. } D. C. 269; L. C. 354.

In this case, on application of the attorneys for the claimant herein, made in open court, it is ordered by the court that an appeal in behalf of the claimants from the final decision of this court, rendered in said cause at the June term, 1859, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings be sent to the Supreme Court of the United States without delay, and that the usual citation be served according to law.

Endorsed: Filed February 17, 1860.

W. H. CHEVERS, *Clerk.*

100 *Order fixing appeal bond.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Friday, the 17th day of February, in the year of our Lord one thousand eight hundred and sixty, for the trial of land cases.

Present: The honorable M. Hall McAllister, circuit judge.

VICENTE MIRAMONTES *et als.* vs. THE UNITED STATES. } D. C. No. 269; L. C. No. 354.

And now, at this day, comes the said claimant, by his counsel, and moves the court to fix the amount of appeal bond herein, whereupon it is now here ordered by the court that the said appeal be allowed on the claimant giving bond in the sum of $300, with sufficient surety, to be approved by the court.

Endorsed: Filed February 17th, 1860.

W. H. CHEVERS, *Clerk.*

101 *Appeal Bond.*

District court of the United States, northern district of California.

THE UNITED STATES, appellees, *ads.* VICENTE MIRAMONTES, *et als*, appellants. } No. 269.

Know all men by these presents that we, James Johnston and Andrew J. McCabe, of the State of California, are held and firmly bound to the above-named United States in the sum of three hundred dollars, to be paid to the said United States, for the payment of which

well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated the eighteenth day of February, in the year of our Lord one thousand eight hundred and sixty.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the district court of the United States for the northern district of the State of California. Now therefore the condition of this obligation is such, that if the above-named appellants shall
102 prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation to be void, otherwise to remain in full force and virtue.

Witness our hands and seals the day and year above written.

JAMES JOHNSTON, [SEAL.]
A. J. McCABE, [SEAL.]

Sealed and signed in presence of—
W. H. CHEVERS.

UNITED STATES OF AMERICA,
Northern District of California, ss:

James Johnston and Andrew J. McCabe, parties to the above bond, being duly sworn, each for himself, says that he is worth the sum of six hundred dollars over and above all his just debts and liabilities.

JAMES JOHNSTON,
A. J. McCABE.

Sworn to and subscribed before me this 18th day of February, A. D. 1860.

W. H. CHEVERS,
U. S. Commissioner.

I hereby approve of the foregoing bond.

San Francisco, Feb'y 18, 1860.

M. HALL McALLISTER,
Judge Cir. Court U. S. Dists. of California.

103 Endorsed: Filed February 18th, 1860.
W. H. CHEEVERS, *Clerk.*

Citation.

UNITED STATES OF AMERICA, *ss:*

To Tully R. Wise, esq., acting district attorney of the United States in and for the northern district of California, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden in Washington on the first Monday in December next, pursuant to an order of appeal granted on the seventeenth day of February, A. D. 1860, by the Hon. M. Hall McAllister, circuit judge of the United States for the districts of Cali-

fornia, and presiding over the district court for the northern district of California, in the discharge of its appellate jurisdiction over the decision of the board of commissioners for the settlement of private land claims in the State of California, in a certain suit wherein
Vicente Miramontes, Ignacio Miramontes, Bernado Mira-
104 montes, Adolfo Miramontes, Arsenio Miramontes, José de los Santos Miramontes, Raimundo Miramontes, Juan José Miramontes, Guadalupe Miramontes, Ramona Rivera Miramontes, Dolores Stanislaus Miramontes, and Carmel Gonzales Miramontes, heirs at law of Candelario Miramontes, deceased, are plaintiffs, and the United States are defendants, on appeal to show cause, if any there be, why the decision in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal at San Francisco, this twenty-eighth day of February, in the year of our Lord one thousand eight hundred and sixty.

M. HALL McALLISTER, [SEAL.]
Judge Cir. Court U. S. Districts of California.

Due service of a copy within citation admitted this 28th day of February, 1860.

TULLY R. WISE,
Acting U. S. Dist. Att'y.

Endorsed: Filed February 28th, 1860.
W. H. CHEVERS, *Clerk.*

105 *Clerk's certificate.*

I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the foregoing and hereunto annexed pages, numbered from 1 to 104, both inclusive, contain a full, true and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders, opinion, decrees, and citation filed in this office in the case entitled

VICENTE MIRAMONTES *et al.*, appellants,
vs.
THE UNITED STATES, appellee.

In testimony whereof I have hereunto set my hand and affixed the
[SEAL.] seal of said court, this third day of March, A. D. 1860, and of our independence the eighty-fourth.

W. H. CHEVERS, *Clerk.*